IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3716 OF 2005

Smt. Vanita Ravindra Jadhav and Ors... Petitioners

Versus

Nashik Municipal Corproation and Ors... Respondents

Mr. R.G. Ketkar for Petitioners.

Mr. R.V. More for R. No. 1.

Mr. R.D. Rane, Government Pleader for R. Nos. 2 to 4.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : JANUARY 23, 2006

P.C.

. Rule. Heard forthwith.

. The Petitioners are now in the employment of Respondent No. 1. Consequent to nine divisions of CIDCO high school having been reduced, 14 teachers were declared as surplus. it is the case of the Petitioners that once they are declared surplus, it is the duty of the Corporation to absorb them in service whenever vacancy arises as the employees of the Corporation. They can not be absorbed in services of private institutions as the provisions of the M.E.P.S. Act,

1981 are not applicable. The Respondent No. 2 has sent communication to Respondent No. 1. The Petitioners point out that there is resolution of Government dated 3.3.2004 laying down the policy of absorption of the surplus teachers. The Petitioners considering the said G.R. are entitled to be absorbed in the school run by the first respondent. The Respondent No. 1 since 2002 has started school at Raigad Chowk on no grant basis. For the academic year 2004-05, 8th to 10th standard divisions were due to commence and as such, 5 posts of trained graduate teachers would be available. The second respondent therefore, by letter dated 9.11.2004 after giving the names of the petitioners, directed respondent NO. 1 to absorb them against the said posts. There has been further communication addressed by second respondent to first respondent from time to time. As the Respondent No. 1 has failed to absorb the teachers, the present petition.

. A reply has been filed on behalf of Respondent No. 1. It is pointed out in the reply that the school at Raigad Chowk is non grant school and teachers have been appointed on the basis of daily wages and as such there are no vacancies. It is admitted that letter dated

9.11.2004 was received by Respondent No. 1 from Respondent No. 2. The reference is also made to Government G.R. dated 23.2.2004 wherein surplus teachers are to be absorbed in the schools run by the Municipal Councils/Corporations in the same district and if the posts are not available in the schools, the teachers are to be absorbed in the schools run by the Zilla Parishad. In other words, though Respondent No. 1 accepts responsibility to absorb the teachers, it is pointed out that there are no vacancies. The school at Raigad Chowk is non grant school and the teachers have already been appointed on daily wages basis.

. Once there is Government G.R., and there are regular posts available, whether the school receives grant or not is immaterial as the Respondent No. 1 would have to absorb these surplus teachers against the regular posts available. The Respondent No. 1 cannot contend that having regular posts they cannot be compelled to pay the salary which the teachers are entitled to. For the sake of convenience, if the Respondent No. 1 have appointed teachers on daily wages, these teachers will have to make way to the regular staff who are rendered surplus and are to be absorbed. Considering that the petition

can be disposed of by issuing the following directions :

(1) The Respondent No. 1 in the first instance to absorb the Petitioners against regular vacancies in Raigad Chowk school and to pay to them regular salaries which they are entitled to, even if respondent No. 1 is not getting the grants.

(2) In the event, in the meantime, the school at Raigad Chowk continues to be on non-grant basis, and vacancies arise in any other schools run by the Respondent No. 1, it will be open to Respondent to transfer the teachers as now absorbed in the said other schools where regular vacancies would be available.

(3) The Respondent No. 1 to absorb the teachers at the end of academic year 2005-06 so that the students taking education in Raigad Chowk school will not be affected.

(4) Considering the G.R. dated 3.3.2004, the State of Maharashtra through Respondent No. 2, 3 and 4 to release salaries to the Petitioner till they are absorbed in the Raigad Chowk School. The arrears to be released within four weeks from today and subsequent

amounts at the beginning of each month in which the salary was due and payable.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)